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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,061	08/27/2003	Paul C. Hunt	11838.10USC3	4634

7590 08/26/2004

Attention: John C. Reich  
MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903

EXAMINER
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WILLIAMS, LAWRENCE B

ART UNIT	PAPER NUMBER
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2634

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/649,061

Applicant(s)

HUNT, PAUL C.

Examiner

Lawrence B Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### *Specification*

2. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Double Patenting*

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claim 3 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.
5. Claim 15 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 4 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

6. Claim 16 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 5 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

7. Claim 17 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 6 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

8. Claim 18 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

9. Claim 19 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

10. Claim 20 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

11. Claim 21 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

12. Claim 22 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 11 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

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13. Claim 23 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 12 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

14. Claim 24 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 13 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

15. Claim 25 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 14 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

16. Claim 26 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 15 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

17. Claim 27 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 16 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

18. Claim 28 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 17 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

19. Claim 29 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 18 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

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20. Claim 30 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 19 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

21. Claim 31 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 20 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

22. Claim 32 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 21 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

23. Claim 33 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 22 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

24. Claim 34 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 23 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

25. Claim 35 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 24 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

26. Claim 36 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 25 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

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27. Claim 37 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 26 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

28. Claim 38 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 27 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

29. Claim 39 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 28 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

30. Claim 40 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 29 of prior U.S. Patent No. 6,154,488. This is a double patenting rejection.

### ***Double Patenting***

31. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

32. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,154,488. Although the

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conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of U.S. Patent No. 6,154,488 claims all subject matter disclosed in claim 1 of the pending application.

33. Claim 2 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,154,488. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of U.S. Patent No. 6,154,488 claims all subject matter disclosed in claim 2 of the pending application.

34. Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,154,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of US Patent 6,154,188 discloses a duplex system wherein the first and second transformers both comprise sub-carrier signal generators. Though claim 1 of US Patent 6,154,188 does not explicitly disclose the transformers comprising sub-carrier generators, It would be obvious for the duplex system to contain some type of carrier signal generator in order to have need of sub-carrier generators.

35. Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,154,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because



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claim 1 of U.S. Patent No. 6, 154, 188 discloses all subject matter claimed in claim 5 of the present application.

36. Claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6, 154, 188. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of US Patent No. 6, 154, 188 discloses an electrical power distribution line and a power distribution circuit. It is well known in the art for a power distribution circuit to comprise a transformer circuit at a utility power station as claimed in claim 6 of the pending application.

37. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,154,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claim 7 is already disclosed in claim 2 of U.S. Patent No. 6, 154, 188.

38. Claim 8 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,154,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claim 8 is disclosed in claim 2 of U.S. Patent No. 6,154,188.

39. Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. U.S. Patent No. 6,154,188.

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Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claim 9 is disclosed in claim 3 of U.S. Patent No. 6,154,188.

40. Claim 10 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. U.S. Patent No. 6,154,188.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claim 10 is disclosed in claim 11 of U.S. Patent No. 6,154,188.

41. Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 31 of U.S. Patent No. Patent No. 6,154,188.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claim 11 is disclosed in claim 31 of U. S. Patent No. 6,154,188.

42. Claim 12 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 13 of U.S. Patent No. 6,154,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 13 discloses a communication system for transmitting information from a utility power distribution node comprising "at least one receiving circuit coupled to the electric power distribution line to receive the information signal and accept information having a **matching address**". This matching address would inherently signify the receiver as the intended recipient as disclosed in claim 12 of the present application.

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43. Claim 13 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. U.S. Patent No. 6,154,188.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claim 13 is disclosed in claim 11 of U.S. Patent No. 6,154,188.

44. Claim 14 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 26 of U.S. Patent No. 6,154,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claim 14 is disclosed in claim 26 of U.S. Patent No. 6,154,188

### ***Conclusion***

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence B Williams whose telephone number is 703-305-6969. The examiner can normally be reached on Monday-Friday (8:00-5:00).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on 703-305-4714. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lawrence B. Williams

lbw  
August 9, 2004



**STEPHEN CHIN**  
**SUPERVISORY PATENT EXAMINEE**  
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